

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4602 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL BABABHAI KESHAVALAL

Versus

ASSISTANT COLLECTOR

Appearance:

MR RC JANI for Petitioner

MS PS PARMAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/02/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner prayed for quashing and setting aside of the orders, annexures, 'A', 'B' & 'C', passed by respondents No.1, 2, & 3 respectively.

3. The facts of the case, in brief, are that the petitioner states himself to be the owner of a shop

situated in Survey No.224 of Chanasma. The Chanasma Nagar Panchayat passed a Resolution dated 24th June 1982 for giving temporary lease of the said land to the petitioner for installing a cabin. Under the said Resolution, temporary lease of different plots of land were given to 13 different persons including the petitioner. The petitioner and other persons made 'Pucca' construction in the said land and lease was renewed by passing Resolutions in the year 1983-84, 1984-85 and 1985-86. Thereafter proceeding have been initiated against the petitioner by the Panchayat for removal of his cabin on the ground that he has encroached 11.72 sq.mts. of land out of Survey No.224, which was a Government land. The City Survey Superintendent of Chanasma, by an order dated 4.10.83, imposed a fine for illegal occupation of the land for two years and also for removal of the encroachment. The petitioner applied for grant of the land in dispute on a long term lease or by sale. the City Survey Superintendent of Chanasma forwarded the papers to the Assistant Collector of Patan for taking necessary action. That application of the petitioner came to be rejected by the Assistant Collector, Patan on the grounds, namely, (i) the petitioner had encroached upon the land which was a part of Survey No.224, and (ii) encroachment was recent one. The petitioner has taken up the matter in appeal by filing Revenue Appeal No.41 of 1984 and contentions were made therein that it is not a case of any encroachment but the petitioner was occupying the land as the same has been granted to him by the Nagar Panchayat. That appeal came to be dismissed by the Appellate Authority under its order annexure 'B' on the record. The petitioner then approached to the Government by filing Revision Application No.376 of 1985 which also came to be dismissed on 11th March 1986. Hence this Special Civil Application.

4. The learned counsel for the petitioner submitted that he has nothing to say against the orders impugned in the Special Civil Application but he prays for giving similar treatment which has been given by the Government to the persons who have also raised unauthorized construction on the Government land. It has been stated to be done by regularization. In para 6(C), the petitioner has given out the facts that one Shri Badruddin Ghisabhai Luhar who had constructed a small factory pursuant to the Nagar Panchayat's lease in Survey No.224, was thereafter granted the land by the Collector by its order dated 16.10.84 for the purpose of manufacturing agricultural implements. It has further been stated that from the said Survey Number, the land

has been granted to Shri Swarupbhai Dahyabhai, Natverlal Kalidas, Keshavlal Ramjibhai and others in the past. In para 6(D), the petitioner has stated that under Resolutions and Circulars produced at annexures E1 to E4, the lands belonging to the Government stood transferred to concerned village or Nagar Panchayat. However, powers regarding disposal of such land are conflicted.

5. Reply to the Special Civil Application has been filed by respondent-State and in para 5 thereof, it has been admitted that Shri Badruddin Luhar was granted open piece of land for industrial purpose and Shri Keshavlal Shrimali and Chavda Natvarlal Kalidas were granted open piece of land for residential purposes. So, it is admitted case that from Survey No.224, lands have been allotted/granted to different persons. The respondent has not disputed the fact that the land has been given on temporary lease to the petitioner. A dispute has been raised that the Panchayat was not competent to allot the land on lease. Distinction in the case of other persons is sought to be made out on the ground that here the petitioner has made encroachment on the Government land and erected shop unauthorisedly. However, I do not consider to express any opinion on merits. This Court is of opinion that the matter atleast needs consideration at the hands of the District Collector, Mehsana. The petitioner has been protected by this Court by grant of interim relief and for all these years, he is there on the land and carrying on his business for his livelihood. It is expected that the Collector, Mehsana, shall take into consideration the fact that the petitioner is there for all these years and if it not an encroachment on public road or street or public way and otherwise if this land is not required by the Government for any other public purposes or it is not a part of the land which is reserved under some scheme for the public purpose, his case may be considered for regularization sympathetically.

6. In the result, interest of justice will be met in case this Special Civil Application is disposed of in terms that the petitioner, if he so desires, may make an application to the District Collector, Mehsana, in respect of regularization of his possession over the land in dispute as well as constructed shop. On receipt of such application, the District Collector, Mehsana, shall consider the same sympathetically in the light of observations made by this Court in this judgment, within a period of six months. Till then, interim relief granted shall continue. In case the application of the petitioner for regularization of his possession and

construction over disputed land is not acceptable, the District Collector, Mehsana, shall pass a reasoned order and a copy of the same may be sent to the petitioner by registered post. Rule stands disposed of in aforesaid terms with no order as to costs.

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(sunil)